IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 4509 of 2003(A)

CC.838/2000 of JUDL.MAGISTRATE OF FIRST CLASS-I, HOSDRUG
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PETITIONER: ACCUSED NO.2 AND 3:
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1. **KRISHNADAS KOYAMMAVALAPPI,**
   AGED 39 YEARS, S/O. RAMADAS, KOYAMMAVALAPPIL,
   PONNANI, MALAPPURAM DISTRICT.

2. **K.P. HAMSA MAMMU, S/O. MAMMU,**
   AGED 42 YEARS, VALANGAT HOUSE,
   PONNANI AMSOM, MALAPPURAM DISTRICT.

BY ADV. SRI.A.MOHAMED MUSTAQUE
SRI.M.SANTHOSHKUMAR

RESPONDENTS: RESPONDENTS:
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1. **THE STATION HOUSE OFFICER, HOSDURG,**
   CRIME NO.280/98, HOSDURG POLICE STATION.

2. **THE STATE OF KERALA, REPRESENTED BY**
   THE PUBLIC PROSECUTOR, HIGH COURT OF
   KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY, J.

Criminal M.C.No.4509 OF 2003 (C)

Dated this the 26th day of July, 2007

O R D E R

Petitioners are accused 2 and 3 in C.C.No.1218/1998 on the file of the Judicial First Class Magistrate Court-I, Hosdurg. Altogether there were seven accused in this case. Offence alleged against the accused are under Sections 448, 380, 363, 506 (ii) 411 read with 149 of Indian Penal Code.

2. According to the prosecution, the accused shared with their common object to commit the offence, trespassed into the travel agency office occupied by CW2, bearing Door No.KMC I-934 situated on the western side of the Kottachery main road on 2.6.1998 at or about 12 noon and they committed theft of Rs.48,300/- kept in the drawer of the table and three air tickets, photo copier, fax machine etc. and moreover they forcibly took CW1 by force from the office into their vehicle bearing registration No.KL 10 F 4500 and criminally intimidated him to be killed. Allegation against accused 5 to 7 was that they were receivers of the stolen property. Petitioners were in Bombay for business transactions. Hence they were not tried along with

other accused. Petitioners case was split up and refiled as C.C.No.838/2000. Prosecution witnesses were examined in the case which was tried against other accused, it was found that none of the prosecution witnesses stated that photo copier, fax machine etc. were stolen by accused 1 to 4 and there was also no evidence to show that the above were recovered from A5 to A7. Since the prosecution witnesses themselves have changed their version there was a finding that no case is established against A1 to A4 also. But at the same time since the petitioners were absconding and their cases were split up, they were not acquitted. But the evidence would show that absolutely no case was against A2 and A3. It is true that merely because case was split up and other accused were acquitted, a criminal case cannot be quashed. No purpose will be served by the proceedings against the petitioners on the facts of this case. In the above circumstances, I allow the Criminal Miscellaneous case and quash the proceedings in C.C.No.838/2000 before the Judicial First Class Magistrate Court, Hosdurg.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal. OF 1998

JUDGMENT

14th March, 2007